



Chamber of Commerce
and Industry WA

Legislative Review of the *Building and Construction Industry Training Fund and Levy Collection Act (1990)*

**Chamber of Commerce and Industry of Western Australia
Response**

21 June 2019

Introduction

The Chamber of Commerce and Industry of Western Australia (CCIWA) welcomes the opportunity to provide input into the five-yearly legislative review (Review) of the *Building and Construction Industry Training Fund and Levy Collection Act (1990)* (The Act). Regular reviews of government programs and legislation are an important part of good regulatory practice, especially when the legislation in question imposes a direct cost on businesses.

Such reviews provide an opportunity to ensure that the legislation is still necessary, fit for purpose and functioning as intended. It is also crucial to assess to what extent the benefits of a government program are greater than the costs it imposes on the economy.

In the case of this Act, the Review is required to address:

- the effectiveness of the Board;
- the attainment of the objectives of the Act;
- the need for the Act to continue in operation; and
- any other matters that appear to the Minister to be relevant.

The Act has two primary objectives:

1. To improve the quality of training in the building and construction industry; and
2. Increase the number of skilled persons in the building and construction industry¹.

To facilitate this, the Act also enables the collection of the BCITF levy and establishes the administrative framework for the fund, including the establishment of the BCITF Board² (the Board).

The 2019 Review is the first to be conducted after the removal of regulations exempting resource sector construction activity from the remit of the legislation.

CCIWA has identified three areas that may be impeding the Board's ability to accomplish its prescribed objectives. These include:

1. A lack of analysis and definition of the specific problem the BCITF is intended to address and the continued need for government intervention. Addressing this can help to better understand and articulate the rationale for government intervention, whether it be market failure, regulatory or government failure, unacceptable risks or the attainment of broader social objectives.
2. The lack of quantitative evaluation to assess the effectiveness of the BCITF and to what extent it has been achieving its objectives (i.e. increasing the level of training in the construction sector).

¹ Government of Western Australia, (1990), Building and Construction Industry Training Fund and Levy Collection Act Pp 1.

² The BCITF Board is the body corporate established under the BCITF Act whose role is to administer the fund and carry activities intended to fulfil the objectives outlined in the Act.

3. A lack of clarity around the level of subsidies that a business can attract through the fund. Feedback provided to CCIWA suggests that the actual level of payment available through the BCITF is not known by a business until it has engaged an apprentice or trainee.
4. A lack of clarity regarding how the BCITF will use the projected increase in revenue collected by the levy following the recent inclusion of the resources sector in the scheme's coverage.

Justification for regulation

At the time of its establishment, the BCITF was seeking to solve problems occurring in the context of a very different vocational education and training (VET) policy environment to the one we have today. At the time, employer-facing incentives were not the norm and the wage cost of apprentices was expected to increase substantially due to the restructuring of award agreements.³ While there may have been justification for the establishment of the BCITF in the early 1990s, it is not clear if the underlying rationale for this policy still exists in the current economic and policy environment.

According to the WA Treasury, there are four primary thresholds used to justify government intervention in a particular area⁴:

1. Market failure
2. Regulatory failure/government failure
3. Unacceptable risk
4. The pursuit of social goals (equity, public order and protection)

Government intervention in the delivery of post-secondary education, be it VET or higher education, is justified through an equity and market failure lens. Government intervention to support the delivery of post-secondary education is considered to create social mobility, resulting in an increase in individuals' earning capacity and reducing their reliance on the State. Therefore, the most significant marginal gains from post-secondary education are likely to be made by people who have the least means to access this education.

The VET sector, specifically apprenticeship and traineeship-based training, is often considered to experience a high degree of market failure. This is due to the perception that employers are taking on a significant risk by engaging an apprentice or trainee. As most of the benefit of an apprenticeship goes to the individual and the public rather than the employer, it can be argued that a market failure is occurring. Current interventions intended to address this market failure and offset the risk borne by employers include: employers being able to pay lower wages to apprentices and trainees, the cost of formal training

³ Legislative Assembly Hansard (1989) *Second Reading Speech Building and Construction Industry Training Fund and Levy Collection Bill*, Pp: 6123

⁴ Department of Treasury Western Australia (2018) *Need for Government Intervention*. Retrieved from: http://www.treasury.wa.gov.au/uploadedFiles/Site-content/Economic_Policy/Better_Regulation_Unit/Need-for-Government-Intervention.pdf

being highly subsidized by governments and in some instances, direct cash incentives to employers. Support provided by the BCITF is in addition to these existing government interventions.

The case for continuing the BCITF in its current form needs to consider the current policy and economic context and how this has changed since the BCITF's inception. There is also a need to revisit and clearly articulate the underlying rationale for the BCITF's existence. This will help ensure that if the continuation of the BCITF is justified, the design and delivery of the scheme can be adjusted to ensure the objectives of the Act are being met. Furthermore, alternative policy mechanisms should be investigated to determine if they could more effectively meet the objectives of the BCITF at a lower cost and with less administrative burden.

Recommendation

- Consider if the current structure and focus of the BCITF is still fit for purpose given significant shifts in VET policy since the BCITF's inception in 1990.
 - Clearly define and articulate the underlying rationale for the BCITF's existence.
 - Assess alternative policy mechanisms to determine if they would be a more effective and efficient option for achieving the objectives of the BCITF.
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The need for proper evaluation

There has been insufficient analysis undertaken to determine if the BCITF is increasing the number of skilled workers in the construction sector.

The 2014 statutory Review of the BCITF found that:

"It is challenging to identify the price elasticity of the apprenticeship subsidy. In this regard, stakeholder feedback indicates that several factors and variables underpin the effectiveness of the BCITF apprenticeship subsidy in increasing the number of apprentices employed."⁵

In response to this finding, the 2014 review recommended:

"...that further research is undertaken to better understand the impact of varying the apprenticeship subsidy and its effect on apprenticeship numbers."⁶

CCIWA has not seen any evidence to suggest that the research recommended by the 2014 review of the BCITF has been undertaken. The inability to determine the effectiveness of the BCITF on apprenticeship

⁵ Stratton R, (2014) Review of the Operation and Effectiveness of the Building and Construction Industry Training Fund and Levy Collection Act 1990 Pp, 30. Retrieved from: [http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3911811ab1a22a94476e100548257d3200290306/\\$file/1811.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3911811ab1a22a94476e100548257d3200290306/$file/1811.pdf)

⁶ IBID Pp.36

numbers suggests there is a limited ability to determine if the benefits of the scheme outweigh the costs that it imposes on businesses and construction projects.

While businesses are accessing subsidies under the BCITF, it cannot be assumed that the subsidy has been a determining factor in deciding to engage an apprentice. Utilisation of the BCITF does not constitute evidence to support the efficacy of the scheme in terms of achieving its stated objective.

The BCITF provides three streams of support aimed at increasing the number of skilled persons in the building and construction sector:

- direct subsidies to employers engaging an apprentice or trainee;
- funding for supplementary skills programs; and
- activities to promote careers in the industry more broadly.

The lack of understanding of the overall effectiveness of the BCITF suggests there is also limited understanding of the value of individual programs delivered under the Fund. This means the BCITF Board is likely making decisions around the structure and allocation of funds to programs without fully understanding their effectiveness.

There is also value in comparing WA's BCITF with equivalent schemes in other jurisdictions to determine their effectiveness and the level of revenue they collect to achieve their stated objective. This could be used to benchmark WA's BCITF and guide changes to the design and implementation of the scheme. For example, Queensland's comparable scheme applies a 0.1 per cent levy to projects. If it is determined that the Queensland scheme is out-performing the WA BCITF, the State Government would need to justify why it applies a higher levy rate of 0.2 per cent.

Recommendation

A robust evaluation framework should be implemented to determine the effectiveness of the BCITF and its individual programs. The evaluation framework should determine to what extent the BCITF is meeting the objective of increasing the number of skilled persons in the building and construction sector. Benchmarking against comparative schemes in other jurisdictions should also be included in the evaluation framework. This will help ensure the design and implementation of the BCITF is fit-for-purpose and that the benefits of the scheme outweigh the costs.

The current system lacks clarity and is challenging to navigate

Several factors are likely to contribute to the effectiveness of an incentive such as the BCITF. These include the value of a subsidy being set so it leads to a business undertaking an activity that they may not have considered previously, and the level of effort required by the business to access the subsidy.

Given the wide range of subsidies on offer under the BCITF's programs and differing loadings depending on location or apprentice characteristics, businesses have reported a lack of clarity around the level of funding they may receive if seeking to engage an apprentice. CCIWA members have advised that the level of subsidy they are eligible for is determined after they have engaged an apprentice or trainee. This suggests that the subsidy may have limited impact on the decision-making process of a business. In turn, this could be inhibiting the overall effectiveness of the BCITF in raising the number of skilled persons in the sector.

Employers' ability to navigate and access the BCITF is further inhibited by poor website design and overly technical guidelines. Employers have noted that it is not an easy process to navigate the BCITF website to identify which qualifications are eligible for subsidies and the likely level of funding available for these qualifications. This information is contained in a guideline document that is provided to employers by Australian Apprenticeship Support Service Providers (ASSN) when a business signs on an apprentice or trainee. However, this document is over 30 pages long and is considered to be overly technical and jargonistic. The eligibility requirement for a trainee or apprentice to be 'onsite' has also caused confusion for businesses, as some employers are unaware of this requirement and/or interpret the classification of 'onsite' differently.

Businesses have also reported that the process for accessing funding through the BCITF and the reporting requirements of the scheme are overly complicated. For example, CCIWA members have commented that administrative costs involved in obtaining and maintaining access to BCITF subsidies may outweigh the value of the subsidy itself.

"The red tape process to apply for subsidies and then to report creates an unreasonable overhead for the contractor. For this reason, it may be that take up tends to be limited to specialist RTO or labour-hire companies more than constructors, who tend not to maintain many people in the training function."

- CCIWA Construction Industry Member.

This is concerning because smaller enterprises have the most to gain from the BCITF subsidy program, as they would likely benefit from employing an apprentice but may be unable to afford the additional cost involved. Smaller businesses are also likely to be highly sensitive to any additional administrative burden involved in assessing BCITF subsidises. If feedback about the administrative complexity of the BCITF is correct, it is likely that the businesses who will benefit most from the BCITF are not taking full advantage

of the subsidies available to them. In turn, this would reduce the overall effectiveness of the subsidy program in meeting its objectives.

Recommendations

- The BCITF should provide clear up-front information on the level of funding a business will be entitled to when taking on an apprentice.
 - The BCITF Board should seek to simplify and streamline application and reporting processes for businesses trying to access subsidies under the scheme.
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Inclusion of the resources sector increases the potential for scope creep

The removal of the BCITF's resource sector exemption is forecast to raise an additional \$27 million – almost doubling the fund's current revenue. Feedback from CCIWA members suggests this figure substantially underestimates the potential revenue to be collected by the BCITF levy from the resources sector.

It is unlikely that demand for the programs delivered by the BCITF will increase at the same rate as the revenue collected under the scheme. This is due to resource projects being more capital intensive relative to workforce and resource companies reporting that they do not need nor want assistance to pay for their training needs. The BCITF should be structured so it can meet its objectives while imposing the least cost on levied parties.

If left unchanged, this situation creates a risk of 'scope creep' as the BCITF Board would be incentivised to expand its activities to ensure that its additional revenue is spent. This is due to industry's understanding that the BCITF levy is collected by the Board from the industry with the expectation that this revenue is returned to industry through the BCITF's programs. To achieve this under a scenario where it is receiving substantial additional revenue, the Board is likely to expand the scope of its programs in order to increase expenditure.

Furthermore, if revenue collected under the BCITF levy far exceeds the funding requirements to meet demand for the scheme, there will be a growing risk that Treasury would be tempted to claim excess funds for diversion to general revenue. This runs counter to the idea that the BCITF levy is raised from industry and redirected back to businesses to achieve training outcomes.

CCIWA therefore considers there is a need to implement a mechanism to restrict the level of revenue generated by the BCITF levy. Potential options for achieving this include reducing the levy rate for all construction projects, applying a differential rate for resource sector construction projects or increasing the levy payment threshold.

Recommendation

Introduce a mechanism to ensure the amount of revenue raised from the levy matches the level of demand for the BCITF's services and programs.
